

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DARRYL PEAKS

§

VS.

§

CIVIL ACTION NO. 9:18-CV-128

FRANKIE ASH

§

**ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ACCEPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Darryl Peaks, a prisoner previously confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Frankie Ash.

The Court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends granting defendant's motion for summary judgment.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). For the reasons stated in the Magistrate Judge's Report and Recommendation, plaintiff has not shown that the defendant was deliberately indifferent to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). As a result, the

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defendant is entitled to qualified immunity, and the Magistrate Judge correctly concluded that the defendant's motion for summary judgment should be granted.

ORDER

Accordingly, plaintiff's objections (document no. 48) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 44) is **ACCEPTED**. Defendant's motion for summary judgment (document no. 29) is **GRANTED**. A final judgment will be entered in accordance with the Magistrate Judge's recommendation.

So Ordered and Signed

Jun 24, 2020

A handwritten signature in black ink, appearing to read "Ron Clark", written over a horizontal line.

Ron Clark
Senior Judge